

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHUNG KAO,
Plaintiff,
v.
R. SORIA, et al.,
Defendants.

Case No. 17-cv-00873-HSG (PR)

ORDER OF DISMISSAL


Plaintiff, a California state prisoner proceeding *pro se*, filed the instant civil rights action against various defendants at San Quentin State Prison (“SQSP”), claiming that he was retaliated against for pursuing an administrative grievance. On April 6, 2017, the Court screened the complaint and found it stated cognizable retaliation and due process claims, as well as supplemental state law claims for intentional infliction of emotional distress, violation of the California Information Practices Act, conversion of property, and negligence. On March 8, 2018, the Court denied defendants’ motion to stay the instant action pending resolution of a similar action plaintiff is pursuing in state court. However, the Court directed plaintiff to file an amended complaint noting that it was no longer clear which claims plaintiff wished to pursue by way of the instant action. Specifically, the Court noted that plaintiff had referred to an amended complaint even though an amended complaint was never filed. The Court also noted that plaintiff has separately filed a request to dismiss his state law claims for negligence and conversion. Finally, the Court noted that plaintiff had elsewhere stated that he had never intended to pursue a state law claim for intentional infliction of emotional distress. The Court directed plaintiff to file an amended complaint within twenty-eight days in order to create a clear record on which claims he seeks to pursue before directing defendants respond.

1 On May 7, 2018, the Court entered an order noting that more than more than twenty-eight
2 days had passed, and plaintiff had not filed an amended complaint or otherwise communicated
3 with the Court. The Court *sua sponte* granted plaintiff an extension of time to June 1, 2018 to file
4 his amended complaint. The Court warned plaintiff that failure to file an amended complaint by
5 the deadline would result in the dismissal of this action.

6 Plaintiff's deadline has again passed, and plaintiff again has not filed an amended
7 complaint or otherwise communicated with the Court. Accordingly, this case is DISMISSED
8 without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Any
9 motion to reopen must include an amended complaint. The Clerk shall enter judgment and close
10 the file.

11 **IT IS SO ORDERED.**

12 Dated: 6/19/2018

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15 HAYWOOD S. GILLIAM, JR.
16 United States District Judge
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